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March 24, 2021

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VIA ECF

Hon. Edward S. Kiel, U.S.M.J.
United States District Court, District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: Toyota Motor Credit Corp. v. CTE I LLC, et al., No. 19-CV-19092

Your Honor:

This firm represents Andrew Unanue in connection with the third-party claims asserted against him in the above matter by defendant Frank Holtham. Those claims are the subject of a fully-briefed motion to dismiss (see ECF No. 102).

Mr. Holtham has voluntarily dismissed his third-party claims and cross-claims against various other parties without prejudice, with the intention of refiling those claims in an existing state court action.

By Order of March 10, 2021 (ECF No. 157), the Court directed that we confer with Mr. Holtham's counsel regarding whether Mr. Holtham's claims against Mr. Unanue should also be dismissed by stipulation. On March 18, 2021, we spoke with Mr. Holtham's counsel, who was willing only to dismiss his client's claims without prejudice to refiling them in state court.

Mr. Unanue is willing to stipulate to the dismissal of the claims against him *with prejudice*. However, having incurred the expense of briefing a motion to dismiss in this Court (the venue in which Mr. Holtham chose to initiate and amend his claims), Mr. Unanue is unwilling to stipulate to a dismissal that leaves open the possibility that Mr. Holtham will refile his claims in the state court proceeding (to which Mr. Unanue is not a party).

Mr. Holtham has already amended his pleading once, and has not submitted any proposed further amendment as would be required for this Court to consider granting him leave to file a third version of his complaint. Accordingly, Mr. Unanue respectfully requests that the Court rule on his previously-submitted motion and dismiss Mr. Holtham's claims against him with prejudice.¹

¹ Mr. Unanue was a citizen of New York at the time the claims against him were filed and is currently a citizen of Florida; at no time during the pendency of those claims has he been a citizen of New Jersey. Mr. Holtham is a citizen of New Jersey and seeks more than \$75,000.00 in damages. Accordingly, this Court possesses jurisdiction over Mr. Holtham's claims against Mr. Unanue pursuant to 28 U.S.C. § 1332(a)(1) independent of their relationship to the underlying action or the other third-party and cross-claims.

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We thank the Court for turning its attention to this matter.

Respectfully Submitted,

s/ Daniel C. Green

Daniel C. Green

Cc: All counsel (via ECF)